

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 383

Citations Affected: IC 23-1-29-4.5; IC 23-1-38.5-13.

Synopsis: Shareholder consent and entity conversion. Conference committee report for ESB 383. For a corporation not registered under the Security and Exchange Act of 1934, permits controlling shareholders to authorize a corporate action by their written consent without prior notice or meeting if subsequent notice is provided to nonconsenting and nonvoting shareholders. Allows for the use of electronic as well as written consents. Permits the conversion of a domestic other entity, such as a limited partnership or limited liability company, to a different domestic other entity. Permits the conversion of a foreign other entity to a different foreign other entity. **(This conference committee report removes provisions providing for the issuance of funding agreements by life insurance companies under certain circumstances.)**

Effective: July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 383 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, delete everything after the enacting clause and insert the
- 2 following:
- 3 SECTION 1. IC 23-1-29-4.5 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2003]: **Sec. 4.5. (a) This section does not apply to any corporation**
- 6 **that has a class of voting shares registered with the Securities and**
- 7 **Exchange Commission under Section 12 of the Securities Exchange**
- 8 **Act of 1934.**
- 9 **(b) Unless otherwise provided in the articles of incorporation,**
- 10 **any action required or permitted by this article to be taken at a**
- 11 **shareholders' meeting may be taken without a meeting and without**
- 12 **a vote if a consent or consents in writing setting forth the action**
- 13 **taken are:**
- 14 **(1) signed by shareholders having at least the minimum**
- 15 **number of votes necessary to authorize the action at a meeting**
- 16 **at which all shareholders entitled to vote were present and**
- 17 **voted; and**
- 18 **(2) delivered to the corporation for inclusion in the minutes or**
- 19 **filing with the corporate records.**
- 20 **(c) Unless the articles of incorporation provide that no prior**
- 21 **notice is required, written notice of the proposed action containing**
- 22 **the information required by section 5 of this chapter must be given**

to the shareholders at least ten (10) days before the action is taken.

(d) If not otherwise determined under section 7 of this chapter, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (b).

(e) Each written consent must bear the date of signature of each shareholder who signs the consent.

(f) A written consent is effective when, within sixty (60) days after the earliest dated consent delivered to the corporation, written consents signed by a sufficient number of shareholders to take action are delivered to the corporation, unless the consent specifies a different prior or subsequent effective date.

(g) For purposes of this subsection, "electronic consent" means a telegram, cablegram, or other form of electronic transmission, and "sign" or "signed" includes any manual, facsimile, conformed, or electronic signature. The following apply to an electronic consent:

(1) An electronic consent to an action to be taken may be transmitted by a:

(A) shareholder; or

(B) person or persons authorized to act for a shareholder.

(2) The date that an electronic consent is transmitted is considered to be the date on which the consent is written, signed, and dated for purposes of this section if the electronic consent is delivered with information from which the corporation can determine:

(A) that the electronic consent was transmitted by a shareholder or by a person or persons authorized to act for a shareholder; and

(B) the date on which a shareholder or an authorized person or persons transmitted the electronic consent.

(3) An electronic consent is considered to be delivered when:

(A) the consent is reproduced in paper form; and

(B) the paper form is delivered to the corporation.

(4) Notwithstanding subdivisions (1), (2), and (3), electronic consents may be delivered to the corporation in any other manner provided by resolution of the board of directors.

(5) A reliable reproduction of a consent in writing may be used instead of the original writing for any and all purposes for which the original writing could be used if the reproduction is a complete reproduction of the entire original writing.

(h) Unless prior notice has been given to the shareholders as provided in subsection (c), prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent of the shareholders must be given to those shareholders, including nonvoting shareholders entitled to notice under this article, who:

(1) did not consent in writing; and

(2) would have been entitled to notice of the meeting if the record date for the meeting was the date on which the first shareholder's signed consent was delivered to the corporation

under subsection (f).

(i) A document required to be filed under any other section of this article regarding the action consented to by the shareholders under this section must state, instead of any statement required by another section of this article concerning any vote of the shareholders, that written consent has been given in accordance with this section.

SECTION 2. IC 23-1-38.5-13, AS ADDED BY P.L.178-2002, SECTION 99, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) After conversion of a domestic business corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

- (1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;
- (2) state the type of other entity that the surviving entity will be;
- (3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and
- (4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic business corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

- (1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;
 - (2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the other entity;
- and**
- (3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity, an officer or another authorized representative of the other entity must execute

the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the other entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the other entity was duly approved in the manner required by its organic law; and

(4) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(e) After the conversion of a foreign other entity to a different foreign other entity has been authorized as required by the laws of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

1 **(3) set forth a statement that the conversion of the other entity**
 2 **was approved in the manner required by its organic law; and**
 3 **(4) if the surviving entity is a filing entity, either contain all the**
 4 **provisions required to be set forth in its public organic**
 5 **document and any other desired provisions that are permitted**
 6 **or have attached a public organic document, except that, in**
 7 **either case, provisions that would not be required to be**
 8 **included in a restated public organic document may be**
 9 **omitted.**

10 ~~(d)~~ **(f)** The articles of entity conversion must be delivered to the
 11 secretary of state for filing and take effect at the effective time provided
 12 in IC 23-1-18-4.

13 ~~(e)~~ **(g)** If the converting entity is a foreign other entity that is
 14 authorized to transact business in Indiana under a provision of law
 15 similar to IC 23-1-49, its certificate of authority or other type of foreign
 16 qualification is canceled automatically on the effective date of its
 17 conversion.

(Reference is to ESB 383 as printed March 28, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 383

Signed by:

Senator Clark
Chairperson

Representative Fry

Senator Broden

Representative Ripley

Senate Conferees

House Conferees